IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision No. 2306 of 2006.
Date of Decision: February 23, 2007.

Charanjit Singh

....**Petitioner**

through
Mr. JBS Gill, Advocate

Versus

State of Punjab & Ors.

...**Respondents**
through
Mr.B.S.Baath, AAG, Punjab.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This revision petition is directed against the judgment and order dated 29.11.2004 passed by the learned Judicial Magistrate Ist Class, Dasuya, whereby the petitioner was convicted under Section 279/304A/338 IPC and was awarded RI of six months (u/s 279 IPC) RI of one year with fine of Rs.10,000/- (u/s 304-A IPC) and RI of six months (u/s 338 IPC), as well as against the judgment dated 4.11.2006 passed by the learned Additional Sessions Judge, Hoshiarpur whereby the petitioner's appeal was accepted only to the extent that his conviction under Section 338 IPC has been set aside but his conviction as well as quantum of sentence awarded under Sections 304-A/279 IPC, has been upheld.

The petitioner was a driver in the Punjab Roadways at

Jagraon and while driving Bus No. PB12-C-9205, he caused an accident on 27.5.1998 in which two innocent persons lost their lives. Both the Courts below, relying upon the prosecution evidence, which includes Baldev Raj – complainant (PW1) and two eye witnesses, namely, Jarnail Singh and Harjinder Singh (PW2 and PW3) as also the deposition made by the Investigating Officer Pritpal Singh (PW4), have held that the accident in question was caused due to rash and negligent driving of the petitioner. It has been held that the petitioner was driving the Bus rashly and negligent at a neck-breaking speed and in the process of over-taking a Tonga, he could not control the bus, which struck against the trees, thereby causing death of the two bus passengers.

Various contentions have been raised by learned counsel for the petitioner in order to cause dent in the prosecution case. It is argued that the Medical Officer, who had conducted medico-legal and post-mortem examination on the dead body of the deceased has not been produced as a witness. Similarly, certain other discrepancies in the depositions of the eye witnesses, are also highlighted.

After going through both the judgments and hearing learned counsel for the parties, I am of the considered view that no interference in the conviction of the petitioner under Sections 304-A/279 IPC is called for. Both the Courts have correctly appreciated the evidence on record and have given cogent reasons to draw conclusions.

Faced with the situation, learned counsel for the petitioner submits that in his entire service career, this is the solitary accident

attributed to the petitioner. It is pointed out that the petitioner has already retired from service and is presently about 70 years old. It is also explained that the petitioner is in judicial custody since 4.11.2006 and in this manner has already undergone more than three and half months actual sentence out of the total sentence of one year awarded to him.

The afore-stated mitigating circumstances are not disputed by learned State Counsel also.

I have heard learned counsel for the parties on the quantum of sentence and keeping in view the mitigating circumstances highlighted by the petitioner, I am of the considered view that it is a fit case where the provisions of the Probation of Offenders Act, 1958 may be invoked for the remainder of the sentence required to be undergone by the petitioner.

Consequently, the impugned orders dated 29.11.2004 and 4.11.2006 are modified to the extent that while conviction of the petitioner under Sections 279/304-A IPC is upheld, the quantum of sentence is substituted and the petitioner is directed to be released on probation for a period of one year, subject to his furnishing requisite bonds to the satisfaction of the Chief Judicial Magistrate, Hoshiarpur and/or Illaqa Magistrate, Dahuya in terms of Section 4 of the Probation of Offenders Act, 1958, subject to the further condition that fine imposed upon the petitioner, however, is enhanced and he is directed to pay a fine of Rs.25,000/- instead of Rs.10,000/- as imposed by the learned Judicial Magistrate, Dasuya vide order dated 29.11.2004. The enhanced amount of fine, if recovered, shall be paid to the legal heirs of the two deceased victims, irrespective of the

amount of compensation, if any, already awarded to them by the Motor Accident Claims Tribunal. The enhanced amount of fine shall be paid by the petitioner within one month from the date of his release from the jail, failing which the order releasing him on probation shall stand automatically revoked and he shall be taken into custody to undergo the remainder of the sentence.

Disposed of.

February 23, 2007. **(SURYA KANT)**
dinesh **JUDGE**